



The conclusions reached in sections B through D were agreed upon by the Commission at its September 27th meeting. The language and conclusion of section A were subject to discussion at the December 4 meeting. This draft attempts to address the questions raised at that meeting with regard to section A. This draft also attempts to track the questions asked by using the original numbers as set out in the request.

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Interpretation of T.C.A. § 3-6-305,
with respect to whether state officials,
when serving as a member of a government
official professional association, may solicit
contributions from employers of lobbyists.

INTRODUCTION:

The following Advisory Opinion is in response to a written inquiry from Mr. Gerry Boaz, on behalf of the Association of Government Accountants (“AGA”), as to whether the Comprehensive Governmental Ethics Reform Act of 2006 (the “Act”) prohibits state officials, when serving in their capacity as members of AGA, from soliciting contributions from local businesses which may be employers of lobbyists.

Mr. Boaz poses the following questions:

(1), (8) Does the Act permit state officials to solicit contributions from local businesses to sponsor an AGA event for the benefit of all AGA members attending the event? (6) Can state officials solicit contributions on behalf of the AGA, or must such solicitations be performed by its private sector members? (9) Are state officials permitted to serve as board members of the AGA and in such capacity solicit contributions on behalf of the AGA? (3) What types of fundraising activities are appropriate? If a state official solicits contributions, can the state official participate in an AGA sponsored event?

(2) Does the Act permit a corporate sponsorship committee, which includes state officials, to solicit businesses if the contribution/donation is for the purpose of purchasing a good or service from the AGA, such as the right to advertise on the AGA’s website or in its newsletter or brochures?

(43) Are state officials permitted to use their state e-mail accounts when acting as AGA committee members and engaging in AGA fundraising?

(45) Does the Act place limits upon the value of items that might be included in conference “goodie bags,” or items that might be donated for sale in a silent auction?

ANSWERS:

In response to the above questions, the Tennessee Ethics Commission (“Commission”) concludes:

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(1)(3)(6)(8)(9) The AGA may establish a corporate sponsorship committee to solicit contributions from local businesses. However, state officials, on behalf of AGA, may not solicit employers of lobbyists.¹

(2) An AGA corporate sponsorship committee may solicit local businesses, including employers of lobbyists, to purchase a good or service from AGA for the fair market value of the good or service, and state officials may serve on such a committee.

(43) Questions regarding the allowable use of state e-mail accounts are not within the jurisdiction of the Commission and should be referred to the state employee's appointing authority.

(54) Gifts provided by employers of lobbyists to state officials are prohibited, regardless of value, unless the item being donated for the "goodie bag" or silent auction falls within one of the exceptions listed in T.C.A. § 3-6-305(b).

BACKGROUND

AGA is a national professional organization which promotes government accountability. Its membership is comprised of government accountability professionals such as auditors, accountants, budget analysts, chief financial officers, information systems managers, finance directors, inspectors general, professors and students. Tennessee officials have received permission from their respective agencies to serve as Chapter Executive Committee members.

Most AGA chapters have fundraising activities. In 2006, the AGA solicited funds from private businesses to be corporate sponsors for the Southeastern Professional Development Conference, a regional event. In addition, the AGA may solicit businesses which conduct business, or which have in the past conducted business, with the Comptroller's Office. AGA wants to start a corporate sponsorship committee to solicit contributions from local businesses to benefit all members of AGA. The AGA plans to host a conference in 2008. As a part of conference participation, attendees will be given a conference "goodie bag." AGA would also like to conduct a silent auction.

DISCUSSION:

A. SOLICITATION OF CORPORATE SPONSORSHIPS BY STATE OFFICIALS (questions 1, 3, 6, 8, and 9)

Does the Act permit state officials to solicit contributions from local businesses to sponsor an AGA event for the benefit of all AGA members attending the event? Can state officials solicit contributions on behalf of the AGA, or must such solicitations be performed by its private sector members? Are state officials permitted to serve as board members of the AGA and in such capacity solicit contributions on behalf of the AGA? What types of fund raising activities are appropriate? If a state official solicits contributions, can the state official participate in an AGA sponsored event?

¹The restrictions on solicitations of employers of lobbyists would equally apply to solicitations of lobbyists.

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According to the facts provided, members of the AGA want to solicit contributions from local businesses to sponsor its events. There is no general prohibition on state officials, as members of a non-profit group, soliciting on behalf of such groups. However, the Tennessee Comprehensive Governmental Ethics Reform Act of 2006² does specifically prohibit the solicitation or acceptance of gifts.

T.C.A. § 3-6-305(a)(2) states:

A candidate for public office, an official in the legislative branch, or an official in the executive branch, or the immediate family of such candidate or official, may not solicit or accept, directly or indirectly, a gift from an employer of a lobbyist or a lobbyist, unless an exception applies.³

The issue raised by the questions is whether the prohibition applies to solicitations made for gifts to be delivered to and made for the benefit of a non-profit entity rather than for the personal benefit of the soliciting individual. The first rule of statutory construction is that “[t]he legislative intent and purpose are to be ascertained primarily from the natural and ordinary meaning of the statutory language.”⁴ The natural and ordinary meaning of the words used in section 3-6-305(a)(2) does not show any legislative intent to make an exception other than as provided by statute. The use of the words “directly or indirectly” after the words “solicit or accept” supports the conclusion that there is no exception based on who receives the gift. Furthermore, none of the exceptions listed in section 3-6-305(b) apply.

Subsection (a)(2) must be “read in the context of the entire statute,” without any forced or subtle construction to limit or extend the import of the language.”⁵ To read the statute in context, it is appropriate to examine the statutory definition of the term “gift.” The definition, in relevant part, is as follows: “‘Gift’ means any payment, honorarium, subscription, loan, advance, forbearance, rendering or deposit of money or services, unless consideration of equal or greater value is received.” Tenn. Code Ann. § 3-6-301(11). This language clearly does not limit “gifts” to things received for the personal use of the person soliciting.⁶

The other subsections of section 3-6-305 do not provide any reason to imply a limitation on the meaning of the term “gift.” Subsection (c) provides, in pertinent part, as follows:

If an official in the legislative or executive branch attends an event and accepts a gift that is provided by a person or entity not subject to the prohibition set forth in § 3-6-305(a), and if a lobbyist also attends the event and knows or has reason to know that the gift has been provided at the suggestion or direction of the lobbyist, then, within seven (7) days following the event,

² 2006 Tenn. Pub. Acts, ch. 1 (1st Extr. Sess.) (hereinafter “the Act”).

³ For a complete list of exceptions, see T.C.A. § 3-6-301(11) and § 3-6-305(b). It does not appear that any exception applies under the facts provided in this question.

⁴ *State v. Blackstock*, 19 S.W.3d 200, 210 (Tenn. 2000).

⁵ *Mangrum v. Owens*, 917 S.W.2d 244, 246 (Tenn. Ct. App. 1995), citing *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977).

⁶ The definitions of executive and legislative “official” ~~are~~ are found in subsections (19) and (20), respectively, of section 3-6-301.

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the lobbyist shall electronically report the following information to the ethics commission: . . .
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Although this subsection specifies acceptance of the gift, this is for purposes of triggering a reporting requirement. The language sheds no light on the extent of the prohibition established by subsection (a)(2). There is no conflict between subsection (a)(2)'s provision that acceptance or solicitation of a gift from an employer of a lobbyist is prohibited, and subsection (b)'s requirement that gifts provided at the suggestion of a lobbyist and accepted by an official must be reported by the lobbyist.

Subsection (d) provides a way in which a violation of the gift ban can be cured:

A gift made contrary to this section, shall not be a violation of this section, if the candidate, official or immediate family member does not use the gift and returns it to the donor within the latter of ten (10) days of receipt or ten (10) days of having knowledge that the gift was a violation or pays consideration of equal or greater value within the latter of ten (10) days of receipt or ten (10) days of having knowledge that the gift was a violation.

This subsection does not address solicitation at all. It addresses acceptance only. Thus when subsection (a)(2) is read "without any forced or subtle construction to limit or extend the import of the language,"⁸ there is no reason to conclude that the legislature intended to exclude gift intended for someone other than the official.

This conclusion is consistent with the general policy underlying the Act. The legislature's statement of intent for the Act provides, in pertinent part, that "public office is a public trust" and that the Commission "is established to sustain the public's confidence in government by increasing the integrity and transparency of state and local government"⁹ State officials are often members of, or volunteers for, non-profit organizations and professional associations, and in that capacity may solicit contributions, depending on the organization or association. An organization such as the AGA, however, is an established and recognized professional organization for government employees that promotes government accountability. In addition, most, if not all, of the state officials who are members of AGA receive their membership as a part of their employment, and their activities are supported by their employing agencies as a part of their job duties. Accordingly, when acting as a representative of AGA, members who are state officials are not performing an activity outside of their job, and it is difficult, if not impossible, for the state official, acting on behalf of AGA, to be seen as performing a role separate from his or her status as a state employee when soliciting contributions from employers of lobbyists. It could undermine the legislature's purposes to sustain the public trust in government if the statute were construed to allow officials to solicit employers of lobbyists on behalf of others, no matter how worthy those others may be. -Therefore, those members of AGA who are state officials may serve as board members and may solicit any business that is not registered as an employer of a lobbyist, but may not solicit any business that is an employer of a lobbyist.

⁷ Tenn. Code Ann. § 3-305(c)(emphasis added).

⁸ *Mangrum v. Owens*, 917 S.W.2d 244, 246 (Tenn. Ct. App. 1995), citing *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977).

⁹ Tenn. Code Ann. § 3-6-102.

B. SALES OF AGA SERVICES TO CORPORATE SPONSORS (question 2)

Does the Act permit a corporate sponsorship committee, which includes state officials, to solicit businesses if the contribution/donation is for the purpose of purchasing a good or service from the AGA, such as the right to advertise on the AGA's website or in its newsletter or brochures?

There is no restriction on the AGA offering to sell goods or services to local businesses for value. If the AGA sells goods or services for fair market value, the payment received from the local business is not a "gift" under T.C.A. § 3-6-301(11), and the gift restrictions of T.C.A. § 3-6-305 do not apply.

Therefore, a government official who serves on the corporate sponsorship committee may contact businesses in order to sell AGA goods or services for fair market value.

C. USE OF STATE E-MAIL BY STATE OFFICIALS (question 4)

Does the Act permit state officials to use their state e-mail accounts when acting as AGA committee members and engaging in fundraising for the AGA?

Questions regarding the allowable use of state e-mail accounts are not within the jurisdiction of the Commission and should be referred to the state employee's appointing authority.

D. VALUE LIMITS ON CONTRIBUTIONS OF TANGIBLE ITEMS (question 5)

Are there limits upon the value of items that might be included in conference "goodie bags", or items that might be donated for sale in a silent auction?

A state official may not receive any item from an employer of a lobbyist or a lobbyist that is considered a gift for the purposes of T.C.A. § 3-6-305(a)(2), regardless of its value, unless it is within an exception to the general prohibition. Thus, although an item may be considered inexpensive, state employees may not solicit or accept the item from an employer of a lobbyist or a lobbyist unless it falls within one of the gift ban exceptions contained in T.C.A. § 3-6-305(b).

Many of the items commonly found in "goodie bags" will fall within one of the exceptions contained in this subsection. For example, T.C.A. § 3-6-305(b)(2) provides an exception for informational materials in the form of books, audiotapes, etc. T.C.A. § 3-6-305(b)(4) contains an exception for sample materials, promotional items and appreciation tokens that are routinely given to customers, suppliers, or potential customers in the ordinary course of business. In addition, T.C.A. § 3-6-305(b)(6)(A) provides an exception for discounts that are provided to the general public or specified groups or occupations in the ordinary course of business.

Accordingly, each item proposed for donation should be analyzed to determine whether it falls within one of the exceptions contained in T.C.A. § 3-6-305(b). If included within one of the exceptions, the item can be included in a "goodie bag," and there is no specific limit on the value of such items.

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Donations to a silent auction are made to the organization, not to the state official per se. Thus, they are not prohibited. Further, anyone attending the event is allowed to bid on the auction items, and the highest bidder is the purchaser of the item. This privilege is equally open to those who are state officials and those who are not.

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Date: **January 15, 2008**